IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8845 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVIND KARA (KALA) MANGARIYA - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

HL PATEL ADVOCATES for Petitioner No(s).: 1.

MS.H.B.PUNANI, A.P.P. for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 12/08/2005

ORAL JUDGMENT

Rule. Ms.H.B.Punani, learned A.P.P., waives service of rule on behalf of the State. This is a Successive Bail Application preferred by the applicant on ground of delay in commencement and conclusion of trial. The applicant is facing charges of offence punishable under Section 489 -A, 489-B and 489-C read with Section 114 of the Indian

Penal Code. He came to be arrested on 4th July, 2004 and his application came to be rejected on 18th of January, 2005 subsequent to filing of charge-sheet.

2. The only question that requires to be considered by this Court is whether the case of the applicant for bail deserves reconsideration in light of the contentions raised before this Court by learned Advocate for the applicant, on the ground of delay in commencement and conclusion of trial.

3. Learned Advocate Mr.Pandya for the applicant submitted that the applicant is in jail since 4th of July, 2004. Nearly 13 and ½ months, the trial is yet not commenced. He submitted that in light of the decision of the Apex Court in 1996 S.C.C. (CRIMINAL) 519 and 1996 S.C.C. (CRIMINAL) 589, the case of the applicant may be considered by this Court. Mr.Pandya submitted that for limited purpose of appreciating nature of allegations and likely sentenced that may be imposed on conviction ignoring chances of acquittal, the Court may examine the case of the applicant.

3.1 Mr.Pandya submitted that the case against the applicant is that at his instance there was a discovery of fake currency notes to the tune of Rs.29,900/.

Mr.Pandya submitted that the discovery is from an open field and not from a closed premises to which one may have exclusive access. He also submitted that co-accused persons who are alleged to have engaged themselves in printing of notes, have been enlarged on bail. According to Mr.Pandya case would fall, at the most under Section 489-C i.e. mere possession of counterfeit currency notes which is punishable with imprisonment upto seven years, and therefore, the case of the applicant may be considered favourably. He has drawn the attention of this Court to the decision in case of R.D.Upadhya (supra) particularly, in the direction given in paragraph Nos.3 and 4 of the judgment, so also, to paragraph No.4 of the Common Cause judgment (supra) and submitted that the discretion of the Court is not taken away by this judgment nor a mandate is given to the Court to release the applicant on bail, but, considering the directions given by the Apex Court in the case of R.D.Upadhya (supra), the Court may use its discretion adopting same analogy in present case, as in that case persons accused of offences of counterfeit currency have been favourably considered. It is therefore, submitted that the applications be entertained.

4.Ms.H.B.Punani, learned A.P.P. appears for the State and opposes this application.

5.It is not possible to accept this Successive Bail Application, so also, the contentions raised by the learned Advocate Mr.Pandya, in light of the discussion to in the paragraphs follow.

5.1 Firstly, it has to be noted that the case of the applicant was earlier considered by this Court on merits and the fact that he has discovered the fake currency notes to the tune of Rs.29,900/- was also considered as a relevant material. The contention that this could be a case of mere possession was also canvassed and considered by this Court and following order was passed considering the fact that the discovery was made of the fake currency notes which were concealed underground and not lying in open field. Prima-facie material in form of special knowledge about concealment was considered. This Court had passed the following order in Criminal Misc. Application No.142/2005 on 18th of January, 2005.

> *"The applicant is found in possession of fake currency notes in large number. Obviously,*

fake currency notes are not kept for sake of keeping nor they are not be displayed as a souvenir. Legitimate inference at this stage would that they were meant for circulation. Looking to the seriousness of the offence which damages the economy of the country, in the opinion of this Court, bail cannot be granted to the applicant. Application stands rejected accordingly."

5.2 Thus, the plea that this is a case of mere possession was not accepted by this Court and it is not possible nor there is any reason to take a different view at this stage. Resultantly, it cannot be accepted that the case would squarely fall, even prima-facie, under Section 489-C of the Indian Penal Code only or that Section 489-A or Section 489-B of the Indian Penal Code would not be attracted. Therefore, it is not possible to accept that the offence with which the applicant is charged can be said to be punishable with imprisonment upto 7 years only.

6. With the above situation, if the decision in case of R.D.Upadhya is considered, at the outset, it has to be noted that there was a decision rendered in light

of situation prevailed in State of Delhi and the directions were appearantly restricted the Court in Delhi, considering the special, peculiar circumstances.

7. If the decision in case of Common Cause (supra) is considered, paragraph No.4; Clause – 1 (c) cannot be applied to the facts of the applicant for the foregoing discussion.

7.1 Apart from that, if Clause – 4 in Paragraph No.4 is considered, an exception is carved out from the directions one and two in cases of certain categories which include offences relating to coins and other type of offence against the State, besides other offences under various Special Acts. The offence with which the applicant is charged is certainly offence against the State, which prescribes punishment upto life imprisonment and therefore, the directions given in Common Cause judgment will not be applicable to the instant case.

7.2 It would also be appropriate to deal with the contention that as punishment prescribed is upto 7 years only, the case of the applicant may be favourably considered considering the time of incarceration. Now, if the categories of case in respect of which exception is carved out from

directions one and two in the Common Cause judgment, there are offences where punishment prescribed is less than 7 years also. Apart from that, as discussed above the case against the applicant is prima-facie punishable with imprisonment for life. Therefore also, contention cannot be accepted.

7.3 It would also be appropriate to consider whether the direction given in case of R.D.Upadhya in respect of bail in cases of offences of counterfeit currency can be applied to the present case. It has to be noted that directions was given in light of special situation prevailing in Tihar Jail and Delhi and cannot be accepted as a general principle. This views is supported by the fact that the Apex Court in case of Common Cause (supra) which is subsequent in point of time has deemed it fit to not give similar direction in case of counterfeiting of currency notes. On the contrary, the categories of cases in respect of which exception is carved out are punishable with lesser punishment and therefore, it is not possible to adopt the same principle as in case of R.D.Upadhya, as is canvassed by the learned Advocate for the applicant.

7.4 For the foregoing reasons there is total absence of changed circumstances which may call for

reconsideration of the case of the applicant for bail.

8. This successive bail application, having been found to be devoid of merits must fail and is therefore, rejected. Rule is discharged.

9. Needless to say that the observations which are made hereinabove are purely for the purpose of considering bail application and will have no bearing on merits of the case of party on the trial.

(A.L.DAVE, J.)

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